

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Section 73.202(b),)	
Table of Allotments,)	RM-10798
FM Broadcast Stations.)	
(West Liberty, Mt. Vernon, Manchester, Annville,)	
Kentucky))	

**MEMORANDUM OPINION AND ORDER
(Proceeding Terminated)**

Adopted: March 28, 2007

Released: March 30, 2007

By the Assistant Chief, Audio Division, Media Bureau:

1. The Audio Division has before it a Petition for Reconsideration jointly filed by Vernon R. Baldwin, Inc., Morgan County Industries, Inc., and Vernon R. Baldwin ("Joint Petitioners") directed to the staff letter returning their Joint Petition for Rule Making. For the reasons discussed below, we deny the Petition for Reconsideration.

2. In the Joint Petition for Rule Making, Vernon R. Baldwin, Inc., licensee of Station WWLT, Channel 276A, Manchester, Kentucky, proposed the substitution of Channel 244A for Channel 276A at Manchester, and modification of its Station WWLT license to specify operation on Channel 244A. This would permit Station WWLT to increase effective radiated power to 6 kilowatts. To accommodate this modification, Vernon R. Baldwin, Inc. proposed the substitution of Channel 236A for then vacant Channel 244A at Annville, Kentucky. In addition, Morgan County Industries, Inc., licensee of Station WLKS-FM, Channel 275A, West Liberty, Kentucky, proposed the substitution of Channel 275C3 for Channel 275A at West Liberty, and modification of its Station WLKS-FM license to specify operation on Channel 275C3. In order to accommodate this upgrade, Morgan County Industries, Inc. also proposed the substitution of Channel 276A for then vacant Channel 275A at Mount Vernon, Kentucky. The Channel 276A substitution at Mount Vernon also required the substitution of Channel 244A for Channel 276A at Manchester already proposed by Vernon R. Baldwin, Inc.

3. We returned the Joint Petition for Rule Making. The basis for that action was the fact that there was a major terrain obstruction between the proposed site for the Channel 276A substitution and Mount Vernon, which precluded 70 dBu coverage of Mount Vernon in contravention of Section 73.315(a) of the rules. The Joint Petitioners filed a Petition for Reconsideration directed to that action.

4. In their Petition for Reconsideration, the Joint Petitioners do not dispute our earlier determination that the proposed Channel 276A substitution at Mount Vernon was technically defective. Instead, the Joint Petitioners set forth a new transmitter site that would avoid any major terrain obstruction and provide 70 dBu coverage of Mount Vernon. In this regard, the Joint Petitioners refer to the Commission action in *Woodstock and Broadway, Virginia*, in which the Commission permitted a rulemaking proponent, in the context of a petition for reconsideration, to amend its proposal to specify a

new technically compliant transmitter site.¹ According to the Joint Petitioners, permitting them to specify a new transmitter site would be in the public interest because it would permit them to improve the facilities of both Station WWLT and Station WLKS-FM.

5. We deny the Petition for Reconsideration. A petition for reconsideration which relies on facts which have not previously been presented to the Commission will be granted only if the facts relate to events that have occurred or circumstances which have changed since the last opportunity to present them, the facts were unknown to the petitioner until after the last opportunity to present them and could not have been learned through the exercise of ordinary diligence prior to such opportunity, or we determine that consideration of the facts is required in the public interest.² At the time of the filing of the Joint Petition for Rule Making, the Joint Petitioners could have specified a technically compliant site for the proposed Channel 276A substitution at Mount Vernon through the exercise of ordinary diligence. They did not do so. In addition, consideration of a new transmitter site is not required in the public interest. There are now outstanding construction permits for both the 244A allotment at Annville and the Channel 275A allotment at Mount Vernon. The originally proposed substitutions do not meet the Commission's minimum spacing requirements at the sites authorized in these construction permits. We will not prejudice these permittees by requiring a new channel and/or transmitter site on the basis of a defective Joint Petition for Rule Making or Petition for Reconsideration. A petition for rule making must be technically correct at the time it is filed.³ At this juncture, setting forth corrected upgrade proposals for Stations WWLT and WLKS-FM in a notice of proposed rule making does not outweigh the public interest concern for technical compliance at the outset to ensure fairness to other parties who file proposals in compliance with our technical rules and the efficient transaction of Commission business.⁴

6. The Joint Petitioners' reliance on *Woodstock* is misplaced. In *Woodstock*, the Commission permitted an existing licensee proposing an upgrade to amend its proposal to specify a new transmitter site in the context of a petition for reconsideration. The rulemaking proponent had demonstrated the availability of the transmitter site, that FAA approval of the tower had been obtained, and that this was the specified site for the proposed upgrade. The upgrade was in the public interest and no proposal before the Commission was prejudiced. In contrast, this proceeding involves the substitution and change in site for a then vacant allotment at Mount Vernon. There is no assurance that the newly proposed transmitter site is available, FAA approval could be obtained or that the ultimate permittee of the Mount Vernon allotment would utilize this site. Moreover, unlike *Woodstock*, consideration of the new site at Mount Vernon would prejudice both the Annville and Mount Vernon construction permits.

7. Accordingly, IT IS ORDERED, That the Petition for Reconsideration IS DENIED.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. This document is not subject to the Congressional Review Act. The Commission, is, therefore, not required to submit a copy of this Memorandum Opinion and Order to the Government Accountability Office, pursuant to the Congressional Review Act, *see* 5 U.S.C. Section 801(a)(1)(A), because the aforementioned petition for reconsideration was denied.

¹ *Woodstock and Broadway, Virginia*, ("Woodstock"), Memorandum Opinion and Order, 3 FCC Rcd 6398 (1988).

² *See* 47 C.F.R. § 1.429.

³ *See Mercedes, San Benito, Brownsville, Premont and Falfurrias, Texas*, Memorandum Opinion and Order, 20 FCC Rcd 15224 (MB 2005).

⁴ *See e.g. Shorter, Alabama*, Memorandum Opinion and Order, 15 FCC Rcd 20641 (MB 2004).

10. For further information concerning this proceeding, contact Helen McLean, Media Bureau, (202) 418-2738.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Assistant Chief
Audio Division
Media Bureau